

Staff, Cities, and OPC all argue that a CTS adjustment is required by PURA § 36.060 and Commission precedent. They cite the Commission's decisions in Docket No. 14965 and 22355, as well as Docket No. 28840, TCC's last rate case, in which the Commission required a CTS adjustment.⁴⁸⁹ They also refer to appellate court decisions that have upheld the Commission's use of CTS adjustments.⁴⁹⁰ In short, these parties argue that TCC's position is directly contrary to both Commission and court precedent and should be rejected.⁴⁹¹

The ALJs agree with Staff, Cities, and OPC that a CTS adjustment is required. PURA § 36.060 requires the use of a CTS adjustment when computing an electric utility's income taxes. It provides:

(a) Unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns, an electric utility's income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from that return, if:

* * *

- (1) the utility is a member of an affiliated group eligible to file a consolidated income tax return, and
- (2) it is advantageous to the utility to do so.⁴⁹²

TCC's status falls within the parameters of § 36.606. Likewise, prior Commission decisions, including TCC's last rate case, require the use of a CTS adjustment. Therefore, the ALJs find that

⁴⁸⁹ *Application of Central Power and Light Company For Authority to Change Rates*, Docket No. 14965, Final Order at FoF Nos. 107, 108, 111-112B (Mar. 31, 1997); *Application of Reliant Energy HL&P For Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Substantive Rule §25.344*, Docket No. 22355, Final Order at 123-24. (Oct. 4, 2001); *Application of AEP Texas Central Company For Authority to Change Rates*, Docket No. 28840, Final Order at FoF No. 194, R3 (Aug. 15, 2005).

⁴⁹⁰ *Central Power and Light Co. v. Public Utility Commission*, 36 S.W.3d 547 (Tex. App.—Austin 2000, pet. denied) and *Reliant Energy, Inc. v. Public Utility Commission*, 153 S.W.3d 174 (Tex. App.—Austin 2004, no pet.).

⁴⁹¹ Staff initial brief at 28-29; Cities initial brief at 90-94; OPC initial brief at 42-43.

⁴⁹² In addition, P.U.C. SUBST. R. 25.231(b)(1)(D) requires that, "Federal income taxes shall be computed according to the provisions of the Public Utility Regulatory Act §36.060."

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TCC is required to utilize a CTS adjustment when calculating its income tax expense to be included in cost of service.

2. CTS Adjustment Calculation

OPC witness Ms. Blumenthal explained the "tax shield" methodology the Commission has used to calculate CTS adjustments. This calculation is based on the sum of each affiliate's reported taxable income or loss for the most recent fifteen years for which income tax data is available, which in this case is 1991 through 2005. The taxable incomes and losses reported by each entity in the consolidated group for each year are summed. Next, this total is separated into two groups: those that total to taxable income and those that total to taxable losses. Then, the portion of net losses of other affiliates that TCC's reported taxable income has shielded is determined by dividing TCC's reported taxable income by the total taxable incomes of all the companies with net taxable income. Finally, the Commission applies the utility's long-term debt interest rate to the cumulative fifteen year historical consolidated savings and includes that amount in the CTS adjustment.⁴⁹³

TCC made the same basic calculation, which it referred to as the "interest credit" methodology.⁴⁹⁴ The difference between OPC and TCC's calculations, however, is that Ms. Blumenthal used each company's taxable income before net operating loss deduction and special deductions, as reported on Form 1120, line 28; while Mr. Bartsch used the amount reported on Form 1120, line 30, which is the amount after net operating loss deduction and special deductions. Using line 28 changes the amount of tax losses realized and TCC's share of the consolidated tax savings.

⁴⁹³ OPC Ex. 5, Blumenthal direct at 21-25.

⁴⁹⁴ TCC Ex. 41, Bartsch direct at 28; Ex. JBB-2.

OPC states that line 28 was used in Docket 14965's tax shield calculation, so that the taxable income of loss for each company in the consolidated group did not include special deductions or net operating loss carry forwards.⁴⁹⁵ It argues that it is not appropriate to use the taxable income amount that is net of operating loss (line 30), because the purpose of recognizing a consolidated tax savings calculation is to allocate net operating losses. Thus, if an income amount is already net of those losses, the result is incorrect, in OPC's opinion. Further, OPC states, the special deductions are generally related to dividends that subsidiaries pay to the parent company, which skews the results because the goal of the CTS calculation is to determine which companies contribute taxable income or losses from operations.⁴⁹⁶

TCC agreed with Ms. Blumenthal that the net operating loss deduction should not be part of the calculation, and it provided a new CTS calculation in Errata Exhibit JBB-2 that excluded the net operating loss deduction.⁴⁹⁷ However, TCC continues to dispute Ms. Blumenthal's exclusion of the "special deductions" that appear on line 29 of the return. TCC disagrees with Ms. Blumenthal's statement that special deductions do not relate to the operations of an individual company in the group. Rather, TCC states, these special deductions are directly associated with a particular company in the group, as evidenced by the schedules included with the federal income tax return.⁴⁹⁸ It also states that this approach is consistent with the Commission's calculations in Docket No. 28840.

In addition, TCC rejects Ms. Blumenthal's use of line 28 instead of line 30 because it does not include the "Adjustments Company" line, which TCC states represents tax adjustments taken on a consolidated basis but which could not be taken by the separate companies on a stand-alone basis. TCC explains that these tax adjustments include items such as capital loss deductions, charitable

⁴⁹⁵ OPC Ex. 5, Blumenthal direct at 26.

⁴⁹⁶ OPC reply brief at 27.

⁴⁹⁷ TCC Ex. 90, Bartsch rebuttal at 7.

⁴⁹⁸ TCC Ex. 90, Bartsch rebuttal at 7.

contribution deductions, and other miscellaneous adjustments specific to the company on whose tax return they appear. Because these amounts can be claimed on the consolidated tax return, TCC argues that it is appropriate that each adjustment be allocated directly back to the company that gave rise to the adjustment. In other words, these deductions are allocable to specific companies on their respective tax returns.⁴⁹⁹ As a result, TCC argues that it is more technically appropriate to use line 30, and it again stresses that the Commission's calculation was performed in this manner in Docket No. 28840.

The ALJs recommend approval of TCC's CTS calculation contained in Errata Exhibit JBB-2. This calculation produced a bundled CTS adjustment (before functionalization and allocation to T&D) of \$23,110,257. In this calculation, TCC eliminated the net operating loss deduction as proposed by Ms. Blumenthal. And the ALJs were persuaded by Mr. Bartsch's testimony that the other adjustments and deductions made between lines 28 and 30 of Form 1120 were specific to each company and should be considered when calculating that company's net income. That is, each adjustment was allocated directly back to the company that gave rise to the adjustment. The ALJs agree with TCC that this is more technically correct, and no party disputed that this is the methodology used by the Commission in Docket No. 28840. Therefore, the ALJs adopt TCC's CTS calculation methodology.

3. CTS Allocation to the T&D Function

As mentioned previously, both OPC and Cities disagree with TCC's methodology for allocating the T&D portion of the CTS adjustment. Because the electric utility industry was not unbundled in Texas until 2002, functional taxable income information is not available for earlier years. As a result, in Docket No. 28840, the Commission used functional taxable income to allocate the total CTS to the T&D functions for the year 2002 and used the rate base percentage assigned to the T&D functions to allocate CTS for each year prior to 2002. Applying that methodology in this

⁴⁹⁹ *Id.*

case, TCC used rate base allocation factors for the years prior to 2002, which produced CTS T&D allocation factors 18.90% for 1991-1996 and 24.30% for 1997-2001. Using taxable income allocation factors for each year after 2001, TCC proposed CTS T&D allocation of 4.43%, 0.00%, 0.48%, and 3.06% for years 2002, 2003, 2004, and 2005, respectively.⁵⁰⁰

Cities witness Mr. Kollen proposed to use the ratio of net T&D plant balances to net total plant balances from the 2002 FERC Form 1 functional plant account report to allocate the CTS amount for 2002 and all subsequent years. This resulted in a significantly higher T&D allocation percent than TCC's proposed methodology. As an alternative, Mr. Kollen recommended that the amount allocated by the Commission to the T&D Function for 2002 in Docket No. 28840 be used in this case for all subsequent years.

Cities acknowledge that TCC's allocation computation is generally consistent with the Commission methodology in Docket No. 28840. However, they argue that TCC's methodology for computing stand-alone functional taxable income is flawed. Cities state that TCC's methodology involves *pro forma* computations of stand-alone T&D taxable income for each year 2002 through 2005. But TCC did not develop a *pro forma* computation of stand-alone *generation* taxable income for those years and instead subtracted the *pro forma* T&D taxable income from the total company taxable income to compute the generation taxable income. In other words, Cities state, TCC simply assumed that the residual of the stand-alone total company taxable income for each of these years was due to the generation function. Cities complain that TCC's methodology produced only minimal allocations of CTS to the T&D functions of 4.43% in 2002, 0% in 2003, 0.48% in 2004, and 3.06% in 2005, compared to 24.30% allocations to those functions for 1997-2001. For additional comparison, although not included in TCC's calculations, Cities state that the T&D allocation would increase to 100.00% for the first six months of 2006, according to TCC's response to Cities RFI 36-

⁵⁰⁰ *Id.* at Ex. JBB-2.

6.⁵⁰¹ Thus, Cities point out, for the years 2002-2005 there is minimal allocation of the CTS to the T&D functions, followed by an increase to 100% thereafter.⁵⁰²

Cities complain that TCC's methodology produces unreasonable results for years 2002-2005, with very high generation taxable income and very low T&D taxable income. They also point out that the taxable income used in TCC's CTS calculations varies from TCC's income reported in FERC Form 1. For example, Cities note that in 2005, TCC CTS methodology resulted in generation taxable income of \$260.279 million, but its FERC Form 1 reported total generation revenues of only \$177.572 million. In addition, Cities point out that the total company revenue that TCC used to compute generation taxable income (total company taxable income less the *pro forma* T&D taxable income) was far greater than the total revenues reported in the FERC Form 1 filings for each of the years 2002-2005.⁵⁰³ Cities agree that some differences can exist between book and taxable revenues, but they argue that the differences for TCC are unusually large, and TCC allocated the differences entirely to the generation function. In Cities' opinion, the allocation of taxable income and the CTS to the generation function is inordinately high, resulting in near elimination of the allocations to the T&D.⁵⁰⁴ Therefore, Cities argue that TCC's results cannot be relied on to determine the CTS allocation to the T&D function.

Cities urge that Mr. Kollen's proposed allocation methodology using net plant value to allocate the CTS to the T&D functions for the years 2002-2005 is a reasonable proxy for the Commission's rate base functional allocation methodology used for the years prior to 2002. Using a net plant allocation factor based on the 2002 FERC Form 1 results in an allocation of 46.60% to T&D. Cities suggest that this compares more reasonably to the net rate base functionalization of

⁵⁰¹ See Cities Ex. 1, Kollen direct at 99.

⁵⁰² *Id.* at 52-53.

⁵⁰³ *Id.* at 100-147.

⁵⁰⁴ *Id.* at 53-54.

38.16% in TCC's filing in the Docket No. 22352 (UCOS proceeding).⁵⁰⁵ Cities' recommendation would result in an increase in TCC's quantification of the CTS of \$10.979 million (combined T&D) using the net plant allocation factor for the years 2002-2005.⁵⁰⁶

In the alternative, Cities propose that TCC should use the 2002 functional allocator computed in Docket No. 28840 for years 2002 through 2005, just as it used of the same functional allocation factor for multiple years before 2002. In other words, Cities contend that once the functional allocation was computed in Docket No. 28840, it should remain unchanged until recomputed in a subsequent rate case. This alternative proposal would increase TCC's T&D CTS by \$766,000. Cities also state that the functional allocation should be a non-issue after 2005 because the Commission should direct that a 100% T&D functional allocation factor be used thereafter.⁵⁰⁷

OPC witness Ms. Blumenthal also proposed an alternative methodology. She recommends using the same T&D rate base allocation factor for 2002 through 2005 that the Commission used for the years 1997 through 2001. Like Cities, OPC objects to the use of taxable income to allocate TCC's CTS for the years 2002 through 2005, which it characterizes as a "drastic change" in methodology from that used for the years 1991-2001. OPC also notes that all of TCC's taxable income or loss will be from T&D operations for 2006 and beyond. As an alternative, Ms. Blumenthal proposes to use the same rate base allocation factor for 2002-2005 as was used for 1997-2001. However, because there is no formal rate base for generation, she compared TCC's net plant balances to the rate base allocators from previous rate cases. This would result in higher CTS being allocated to the T&D function than under TCC's methodology.

⁵⁰⁵ *Id.* at 54-55.

⁵⁰⁶ *Id.* at 55, 152-53, *also* at 7-8, Tables 1 and 2.

⁵⁰⁷ *Id.* at 55-56.

TCC argues that because the Commission used the available functional taxable income information in Docket 28840 to allocate the CTS adjustment for 2002, it makes sense to base the allocation of the CTS amount on the same taxable income information for each year going forward. It rejects Cities' and OPC's proposed alternatives because, in TCC's opinion, the functional taxable incomes previously used by the Commission provide the best approach for allocating the CTS amount to T&D. In other words, TCC states, if taxable income information was appropriate to use for 2002, it is also appropriate to use each subsequent year's taxable income information for CTS allocation purposes. It argues there is no reason to overturn the Commission's allocation methodology adopted in Docket No. 28840 for a method that, in TCC's opinion, provides a less accurate basis for allocating the CTS amount to T&D.

TCC denies Cities' claim that TCC's methodology cannot be correct because it results in relatively high generation taxable income in years 2002 through 2005 when compared to FERC Form 1 information. TCC witness Mr. Bartsch explained that FERC Form 1 income contains book, and not taxable, income information and that book/tax income differences are common. He further stated that post-2002 plant sales generated taxable gains for the generation function that were not reflected in book income.⁵⁰⁸ TCC also states that Mr. Kollen's comparison of total company taxable income to total Company FERC Form 1 revenues is inappropriate. Mr. Bartsch testified that for financial reporting purposes, Sales for Resale - Purchases and other transactions related to power trading are netted against revenues, whereas these expense amounts are included in Cost of Goods Sold in the tax return. In other words, revenues are reported on a gross basis on the tax return and are reported on a net basis for financial reporting purposes; therefore, TCC states, it is logical that the revenue amount reported on the tax return would be higher than the revenue amount reported in the FERC Form 1 report. TCC cites 2004 as an example where TCC recorded nearly \$400,000,000 of Sales for Resale - Purchases and expenses related to power trading that were included in Cost of Goods Sold on the tax return, but were included as a reduction of Revenues for financial reporting purposes. In addition, TCC states, the FERC Form 1 Reports for 2004 and 2005 did not include the

⁵⁰⁸ TCC Ex. 90, Bartsch rebuttal at 14.

tax gains realized on the sale of its generation plants, but these amounts were reflected on the federal income tax return for those years.⁵⁰⁹

Concerning Mr. Kollen's proposal to use the ratio of net T&D plant balances to net total plant balances from the 2002 FERC Form 1 to allocate the CTS amount for years 2002-2005, TCC notes that this methodology results in a significantly higher T&D allocation percent than even that used for the years prior to 2002. In TCC's view, the functional taxable incomes used by the Commission in Docket No. 28840 provide the best approach for allocating the CTS amount to T&D. It also dismisses Mr. Kollen's alternative functionalization methodology that uses the amount allocated to the T&D Function for 2002 in Docket 28840 for all subsequent years in this case. It stresses that the functional taxable income information is now available for each year subsequent to 2001, which is what the Commission used in Docket No. 28840. As a result, TCC states, the T&D allocation factor should be determined each year based on that particular year's functional taxable income information. It argues that the functional taxable incomes are the best indicator of the impact of the T&D operations on the computation of the CTS amount. And if taxable income information is appropriate to use for 2002, TCC insists that it is also appropriate for each subsequent year's taxable income information.

Likewise, TCC contends that Ms. Blumenthal's proposal to use the same T&D rate base allocation factor for 2002-2005 that the Commission used for the years 1997-2001 would be inappropriate. It argues that the Commission established in Docket No. 28840 the methodology to be used for years in which the functional income tax returns are available. Because the Commission's CTS adjustment methodology is based on taxable income and loss information, TCC states that the functional taxable incomes are the most accurate indicators and should be used when they are available.

The ALJs are concerned that TCC's allocation methodology, which uses functional taxable income for years 2002-2005, produces very low allocation factors for those years. Nevertheless, that

⁵⁰⁹ *Id.* at 15-16.

is the methodology used by the Commission in Docket No. 28840, and the ALJs agree that use of the functional taxable income is the more logical methodology since the CTS is itself based on taxable income and losses. Indeed, the reason functional taxable income is not also used for the years 1991-2001 is that such information is not available because the former vertically integrated utilities did not unbundle until 2002. It also appears that beginning with 2006 this will no longer be an issue because 100% of TCC's income will be allocated to T&D functions. In contrast, the methodologies of Cities and OPC are result oriented. That is, they have developed alternative proposals with the sole purpose of increasing the allocation of the CTS to the T&D function in this case. The ALJs were also not persuaded by Mr. Kollen's complaints that TCC's taxable income varied from the information reported in its FERC Form 1. As explained by Mr. Bartsch, significant, legitimate differences exist between reporting for federal income taxes and the financial reports contained in FERC Form 1. In short, the ALJs adopt the CTS allocation methodology used by TCC for years 2001 and later, as that is the methodology used by Commission in Docket No. 28840 and is the methodology most closely related to the underlying calculation of the CTS adjustment. This produces a CTS adjustment for TCC of \$1,901,184 before gross up and \$2,924,898 after gross up.

Q. Ad Valorem Property Taxes

In its initial filing, TCC requested its adjusted test year level of ad valorem taxes in the amount of \$31,939,121. At that time, uncertainty existed as to whether legislative action would result in a reduction of those taxes. Accordingly, TCC requested a rider which would have reduced its rates if ad valorem taxes were reduced. That issue has now been resolved, and TCC accepted in its rebuttal case the recommendations of Staff witness Mary Jacobs regarding ad valorem taxes. Ms. Jacobs' recommendation is that TCC's initial request of \$31,939,121 be reduced by \$4,085,223 for a total amount of \$27,853,898. The ALJs also recommend adoption of Ms. Jacob's adjustment.



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November 16, 2006

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RE: **P.U.C. Docket No. 33309; SOAH Docket No. 473-07-0833 –
*Application of AEP Texas Central Company for Authority to Change
Rates***

Dear Mr. Galloway:

Please find attached for filing a correction to the direct testimony of Jeffrey B. Bartsch, Exhibit JBB-2, pages 1 and 2. The errata impacts only page 2 of the exhibit, specifically, the Long Term Borrowing Rate, which impacts the CTS Adjustment-Bundled, CTS Adjustment-T&D, Gross-up and CTS Adjustment-T&D Grossed-up. This correction does not impact AEP Texas Central Company's proposed revenue requirement in this proceeding.

If you have any questions, please don't hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,

Nancy Napolitano

Attachment

